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COURSE OF LECTURES.

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COURSE OF LECTURES

To be Commenced on Monday, May 11, 1801.

ON THE

State of Society,

AT THE OPENING OF THE

NINETEENTH CENTURY ;

CONTAINING

INQUIRIES

INTO THE CONSTITUTIONS, LAWS, AND MANNERS,

OF THE

PRINCIPAL STATES OF EUROPE,



BY HENRY REDHEAD YORKE,

OF THE

INNER TEMPLE, STUDENT AT LAW.

Nisi forte rebus cunctis inest quidam velut orbis, ut que-madmodum temporum vices, ita morum vertantur ; nec omnia apud priores meliora, sed nostra quoque ætas multa laudis et artium imitanda posteris tulit.

TACIT. ANNAL. 3. 35.

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A
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TO those who have been attentive spectators of the violent revolutions which have broken the confederacy of Europe, and defaced its public code, it may appear strange, that no attempt has ever been made in this age and country of liberal inquiry, to delineate by the most ancient and approved mode of communicating knowledge, the relative power, and domestic polity of those nations, in whose security and independence, the interests of Great Britain are necessarily interwoven. We have been reproached, perhaps justly, with entertaining too contemptuous an opinion of the jurisprudence and political arrangements of other countries. Renowned for justice, humanity, and valour, and animated by a sense of those advantages, which, when wisely administered,

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nished, our own free government cannot fail to dispense, we are willing to ascribe to a superior destiny, what has originated only in political wisdom operating on a happy combination of circumstances. But, though an honest prepossession in favour of our own national institutions, is at all times commendable, yet, we should not be unmindful that under forms of polity, materially different from our own, the several communities of Europe have enjoyed a degree of relative happiness, proportioned to their education, their habits, and their moral condition. Nor is it a just inference, that because, under the harmonious frame of the British constitution, the subject is sheltered from the aggressions of power, and the perversion of justice, the people who live under governments less popular and prudently balanced, must therefore be the wretched victims of capricious despotism, or the sport of insolent and licentious democracies. The common object of every European government, and indeed of all government, is the PUBLIC GOOD; but the comprehensive views which are exerted in its attainment, and the *mode* in which it is to be exercised when attained, depend on a variety of circumstances, totally distinct from any notions of metaphysical perfection. Religion, Climate, and Geographical position, must influence, in a greater

greater or lesser degree, all positive institutions, and consequently, must present the picture of society under very peculiar and distinct aspects. The Public Good, therefore, may be promoted by various means, and these varieties in legislation may be considered as so many specific differences of which it is the genus, all moving in the same direction, and constituting the aggregate or abstract idea of good government.

But, without recurring to any logical analogies in order to demonstrate a positive fact, we may conclude, that from this unavoidable dissimilarity in the circumstances of mankind, we are to account for all the different modifications of political government ; and that to wish the extension of the influence of any constitution, or to apply the laws of any people however admirable, to states in a less advanced stage of civilization, and supported by the habitual prejudices of fear or religious constraint ; would not only be highly impolitic, but by unsettling their opinions, would expose their happiness to the sport of chance, and perhaps retard those advances, which they might otherwise make, if left to the tranquil operations of time, experience, and social instruction.

From these principles, which are capable of a more detailed illustration, it cannot be denied, that it is time to discard a prejudice which is national without being charitable, and injurious to other countries without being profitable to our own. Far be the supposition, that such reasoning will weaken the partiality we bear, and the preference we justly give to our own, over the polity of every other nation of the habitable globe. No ! the love of our country is a lesson of reason, confirmed by habit, and sanctioned by the enjoyment of privileges through a long succession of ages. It is therefore with a mixture of pride and grateful exultation, that every subject may exclaim in the impressive language of the mildest of kings, and best of men, “ I glory in “ the name of Briton.” No unfavourable imputation, therefore, should be cast on those, who desire the removal of an unfriendly prejudice, the extinction of which, can in no degree affect those patriotic emotions, to which we are all impelled by so many motives of education, interest, and obligation. In the course of my lectures, I shall often have occasion to bear ample testimony to the lustre of our constitution, and to display in a conspicuous light, its comparative superiority over the brightest models of national policy. But in reviewing the political systems of other countries,

countries, let us never be forgetful, that *they* also have their peculiar advantages, which, though we may disregard them, are essentially connected with their existence and felicity; let us remember, that we are indebted to some of them for many happy discoveries in science, and for many useful improvements in the discipline of war, and the milder arts of peace. To their public lawyers and historians, to their able statesmen and civilians, to their theologians and philosophers, *we* are obliged for the investigation of matters most important to the interests of mankind. It was in Germany, that the power of reason effectually broke the fetters in which the sordid and jealous ambition of superstitious knaves, had rivetted for centuries, the human intellect. It was in Germany, amidst the contentions and struggles incidental to so great a revolution, that the generous doctrines of public freedom flowed from the pen of Althusius; and that toleration supported by prowess, wrenched from the hand of bigotry, the ensanguined dagger of persecution. Lastly, it was in the woods of Germany, that the most recondite antiquaries of Britain have penetrated, in order to explore the origin of that beautiful system of government, which their posterity now enjoy.*

But,

* Si l'on veut lire l'admirable ouvrage de Tacite, sur les mœurs des Germains on verra que c'est d'eux que les Anglois ont tiré l'idée de leur gouvernement politique. Ce beau système a été trouvé dans les bois.—Montesquieu.

But, it may be objected, if public good be the object of all government, how are we to reconcile to it those undisguised violations of justice, and those wanton acts of cruelty which are often perpetrated on the continent of Europe?—To this I answer, that the mal-administration of governors is no more evidence against the general rule, than the abuse of a principle can be inferred as an argument against the principle itself. Public good is the *cause*, though not always the *effect* of government; and when it becomes avowedly and systematically abused, the delinquents have commonly experienced in the vengeance of an exasperated people, the punishment due to their crimes. Such a mode of obtaining redress or averting further mischief is for ever to be deplored, and rarely occurs in a state whose fundamental laws have guarded the subject against such heinous exertions of power. It is the possession or want of such security which marks the difference between free government and despotism; and although every state under our present consideration, enjoys some kind of provision against injustice, whether arising from the influence of religion, an intermediate body of men, or laws become sacred by their antiquity, yet, in proportion to the strength of this security, the people must undoubtedly be denominated, more or less free. It
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may however be assumed as a political aphorism, that wherever a government has existed for ages, and men have enjoyed tranquillity under it, it is a proof that its principles are not essentially at variance with each other. The exercise of power may be strengthened or relaxed according to the moral condition of the people ; and what might in Britain be termed an act of tyranny, may be requisite in Russia, to preserve unbroken the common links of society. We, therefore, who live in a land of the highest liberty to which we are fitted, are not warranted in pronouncing an indiscriminate censure on every exertion of power that we cannot easily reconcile to our own habits and institutions. The beast of prey and the docile animal are differently treated ; the one, we are compelled to enclose within iron bars, the other, we permit to range at liberty. In the same manner, the citizen who is habituated by education and example to a sense of justice, we can commit to the guidance of his own discretion ; but the fierce and unruly barbarian must have all his motions watched, lest he spread around him the evils which spring from violent and uncontrouled passions. In short, we are not discussing which is the best abstract form of government, but that which is best adapted, in its practical application, to the people governed.

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In this sense, the reply of Solon must be considered as the expression of political wisdom.

If I have succeeded in removing a prejudice which has been the cause of our voluntary ignorance of the institutions of other states; it follows, that some inquiry into their constitutions and laws, will be productive, at this time, of numberless advantages. For, the new century opens with events of such extraordinary magnitude and interest, that without some previous knowledge of this kind, we shall be neither fortified nor prepared against the consequences which are likely to arise from them.

Since the conquest of Constantinople by the Turks, every century has been fertile in great and unexampled changes. To that event is ascribed the revival of letters among the Western nations. The next century beheld the rapid change in the religion, and the political system of a considerable part of Europe. The new dogmas of the reformers supported on one side, and opposed on the other, with all the zeal which the interests of religion, well or ill understood, are apt to inspire, impelled alike their partizans and adversaries to extend their intellectual pursuits. Quickened by this great motive, emulation enlarged the sphere

sphere of human knowledge; and its light, long concealed beneath the clouds of error and confusion, blazed forth even on subjects which seemed most foreign from those disputes. In the seventeenth century, a new system of philosophy was founded, which, though persecuted at first with great acrimony, was afterwards embraced with superstitious avidity, and at length reduced to those principles only, which were just and true. Lastly, the eighteenth century has witnessed revolutions in government, laws, manners, religion and states, of which there is no example in the annals of the human race.

Every age which thinks in a different mode from the age that went before it, invests itself immediately with the title of philosophical; much in the same manner as antiquity dignified with the name of sages, those who had no other pretension to it than the merit of contradicting their cotemporaries. In modern times, we attach the character of philosophers to many, who are merely distinguished for their talent of furbishing up old systems in a more polished phraseology; or who, for the empty gratification of a transient popularity, have caught the public by surprise, and diverted them from the beaten track of sober experience, and cautious induction. Indeed, the

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habit of generalization, though generally productive of scientific research, yet, when applied to the purposes of political inquiry, if extended too far, is as liable to pervert the understanding, as the habit of generalizing from one or a few particulars in the history of man. These systems have been received with such extacy, and are circulated with such pertinacious zeal, that it is much to be feared, society will not easily recover from the shock which it has experienced. Helvetius himself, the most acute and original genius of this sect, is now become an ancient, compared with some of his disciples. As these builders of aerial castles are fond of propagating their doctrines, perhaps without foreseeing their practical influence on society, it has been questioned by cautious and well meaning persons, whether the advantages which genuine philosophy expected to derive from the discovery of the art of printing, may not be ultimately defeated by the chartered libertinism of the press? Doubtless, if we compare without prejudice, the present state of human knowledge, with that which has passed away, we shall perceive a considerable progress in various branches of moral and natural philosophy. But, the generations which are yet to follow, will discover in many points which may seem too minute and familiar for philosophy

loſophy to dwell upon, the ſources of many errors of the underſtanding, and of many corruptions of the heart. We nevertheless alledge that we have diſcuſſed and analyzed all ſubjects from prophane mythology to the foundations of revealed religion, from metaphyſics to matters of taſte, from muſic to morality, from the ſcholastic diſputes of theologians to objects of commerce, from the rights of princes to the rights of ſubjects, from queſtions of the utmoſt importance to queſtions of no importance at all. On ſome of theſe ſubjects new light has been ſhed, upon others ~~freſh~~ obſcurities have ariſen: the conſequences of this general ebullition of the mind, have been compared to the ebbing and flowing of the ocean, which caſt ſome goods on the ſhore, and removes others to a greater diſtance.*

What may be the ultimate effects of all theſe events on the beings who are to fill the cycle of the nineteenth century, is a matter of momentous, but doubtful ſpeculation. If, however, we meditate on what is now acting on the theatre of Europe, if we examine critically the literary productions and general topics of converſation; if we ſurvey the manners, and remark the extent of

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* *Effai ſur les Principes des Connoiſſances Humaines* par M. D'Alembert, Tom. 4.

the conceptions and hopes of the men of this age; we shall observe, that in many of the most important concerns of life, a very surprising change has taken place in the ideas of mankind. But there is not a feature more prominently disgusting in the history of modern Europe, than that mockery of all public law, which by one stroke of the pen, transfers whole nations, without their consent, to foreign masters; partitions the fairest portion of civilized society among a few ambitious dynasties, dissolves the reciprocal bond of protection and allegiance by which a government and people are held together, scatters widely the seeds of contention and unceasing revolt, and establishes the plea of military government, which being rendered permanent, genius droops and withers, the best forms of social order moulder to decay, and peace, justice and freedom, are banished from the face of the earth.

This consideration is of itself sufficiently powerful to justify our inquiries. To develop the causes, to ascertain the object of this revolution, the benefits or calamities of which our posterity will appreciate better than ourselves, is a task worthy of human nature. Nor can it fail to be an highly amusing as well as instructive lesson, to review from an eminence the lot of these nations before

before they are extinguished from the page of independence; and to contemplate those laws, governments and manners, which once raised them to a proud equality in the scale of European communities, and which have since proved too feeble to resist the inroads of corruption, the shocks of adversity, and the violence of usurpation.

Having thus briefly unfolded the nature of the objects on which I have presumed to fix the public attention, it remains that I explain the manner in which I shall proceed, and the extent to which I shall carry the following lectures; premising, however, that they are not intended, exclusively, for my fellow students, but are designed for men of the world, and for general reception. They are composed for the use of every person who has leisure and inclination to devote his mind to such pursuits; and for this reason, I shall give to my narrative all the clearness, and to my demonstrations, all the precision which the subjects will admit.

Before I enter into a minute and circumstantial examination of the relative power, fundamental laws, and domestic policy of the principal states of Europe, I shall present to my audience, a general outline of the progress of society and
government,

government, from the earliest ages to the period which falls more immediately under our consideration. In this mode only, can government and manners be studied to advantage. Such a recapitulation will often be found to explain the causes of many existing institutions. In illustrating the progress of jurisprudence, we shall have frequent occasions of admiring and observing how legislation refined, and kept pace with the improvement of the intellectual powers and the moral advancement of nations. To delineate in this manner the spirit of nations, we must recur to authentic documents, credible and impartial historians; and to determine their relative happiness, we must compare the accounts of their moral state, delivered by different writers, living in different ages, yet representing mankind under similar situations. Thus Homer and Ossian may be adduced to illustrate the primitive histories of the Bible, and Charlevoix and Lafitau to corroborate the descriptions of Homer and Ossian. In this light, the beautiful art of poetry, which falls principally within the province of imagination, may be rendered subservient to the investigations of reason. By the aid of this comparative history, we may collate materials from Hindu laws to elucidate the institutions which the human mind has invented in similar stages of society. The success
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of our discoveries on this head, must depend on the care with which we select and arrange our materials. Modern compilations afford but little assistance, and the voluminous chronicles of nations, record frequently nothing but insipid genealogies and unprofitable fables.

Unfortunately, this exposition of the order of social life and civil policy, cannot be circumstantially extracted from the general relations of history. Inquiries of this sort are seldom attended to by historians. They prefer what is brilliant to what is useful, and dwell with raptures on the conduct of generals, the valour of armies, and the consequences of victory and defeat. And while they describe and embellish the politics of princes and the fortunes of nations, the splendid qualities of eminent men, and the lustre of heroic actions, they neglect all disquisitions into laws and manners, as unworthy of remark, or incapable of ornament. Antiquaries have displayed much critical and laborious investigation, but the spirit of customs and of laws has also escaped *their* penetration. They often throw together their materials without arrangement, they are often unable to reason from them, and forgetting that the human mind advances progressively, they ascribe to rude ages the ideas and sentiments of their own times.

times. These are all impediments in the way of political examination, and they have besides the fatal tendency of obliterating for a time our sense of moral duty and the true interests of nations. Neither are these descriptions the most entertaining portions of historical narration. Scenes of carnage though dressed in the pomp of words, may dazzle the eyes for a while, but they cannot ultimately fix the attention of mankind. Doth not the ingenious scholar, who has enlarged and enlightened the faculties of the human mind; the inventive artist, who has increased the comforts and conveniences of human life; the adventurous merchant or mariner, who has discovered unknown countries, and opened new sources of trade and wealth; deserve a place in the annals of his country, and in the grateful remembrance of posterity; equally with the good prince, the wise politician, or the victorious general? Can we form just ideas of the characters and circumstances of our ancestors, by viewing them only in the flames of civil and religious discord, or in the fields of blood and slaughter; without ever attending to their conduct and condition, in the more permanent and peaceful scenes of social life? Have we no curiosity to know, at what time, by what degrees, and by whose means, mankind have been enriched with the treasures of learning,

learning, political wisdom, arts and commerce? It is impossible. Such curiosity is natural, laudable, and useful; and it is hoped, that this attempt to gratify it, will be received by the public with some degree of favour.*

Had the generality of historians attended to these important considerations, the labours of moral inquiry would have been abridged, light would have been diffused over the most interesting portions of human science, and I should have been enabled to trace the progress of society from the uncultivated forest to the polished capital, with the utmost exactitude, and without being once compelled to hazard a conjecture. But as these things have not been performed, the subject is exposed to discussion and to difference of opinion; it will therefore be my duty to investigate it in such a manner as to convince the minds of my hearers, that laws, government, and manners, have not only a necessary connection with history, but with each other. This fact has been unanswerably demonstrated by Dr. Gilbert Stuart in his masterly "View of Society in Europe"—a work that must immortalize his reputation as

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* See Dr. Henry's General Preface to his History of England. This indefatigable and excellent historian is a marked exception to the preceding observations.

one of the most acute and philosophical inquirers into the dark annals of unlettered ages. Laws and manners, says he, are commonly understood to be nothing more than collections of ordinances, and matters of fact ; and government is too often a foundation for mere speculation and metaphysical refinements. Yet law is only a science, when observed in its spirit and history ; government cannot be comprehended but by attending to the minute steps of its rise and progression ; and the systems of manners which characterize man in all the periods of society which pass from rudeness to civility, cannot be displayed without the discrimination of these different situations. It is in the records of history, in the scene of real life, not in the conceits and the abstractions of fancy and philosophy, that human nature is to be studied. But, while it is in the historical manner that laws, customs, and government, are to be inquired into, it is obvious, that their dependence and connection are close and intimate. They all tend to the same point, and to the illustration of one another. It is from the consideration of them all, and in their union, that we are to explain the complicated forms of civil society, and the wisdom and accident which mingle in human affairs.

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In the course of our exposition, we shall discover that the same elementary truths, variously modified by his errors and institutions occur in every page of the history of man ; and that all the forms of despotism originate in their perversion. The distinctions between individuals, families, or tribes, will be found to arise from causes subsequent to birth ; from education, example, forms of government ; from the order of internal laws, from the maxims and genius of religion, from the lights of science and philosophy, and from the operations of the external elements. When we contemplate the amazing diversity in the manners of different countries, and even of the same country at different periods ; when we survey the distinctions of national characters, and the singular customs that have prevailed ; we are led to discover the various dispositions and sentiments with which man is endowed, the various powers and faculties which he is capable of exerting. The manners, the crimes of illiterate savages, appear to us in their full dimension and deformity ; but the violations of natural law among civilized nations have a solemn varnish of policy, which disguises the enormity of guilt. The greatness too of a community dazzles the eye, confers an imaginary value on its members, and eclipses the milder lustre of more humble tribes. These ap-

pearances in civil life are often delusive. From the situation of a people in different ages and countries, they are presented with particular views of expediency ; they form peculiar maxims, and are induced to cultivate and acquire a variety of talents and habits. Thus man is every where essentially the same ; and we must necessarily conclude that the untutored Indian and the civilized European would have acted upon the same principles. Hence, it follows, that laws and governments, can never be thoroughly understood, unless they are traced historically, from their lowest to their highest points of improvement. Hitherto, they have been taught like geography, in which the memory is employed, and rarely the judgment. Such neglect of the history of law, says an eminent legal historian*, is the more strange, that in place of a dry, intricate and crabbed science, law treated historically becomes an entertaining study ; entertaining not only to those whose profession it is, but to every person who hath any thirst for knowledge. With the generality of men, the history of law makes not so great a figure, as the history of wars and conquests. But readers of solid judgment find more entertainment, in studying the constitution of a state, its government, its laws, the manners of its people ; where reason

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is exercised in discovering causes and tracing effects through a long train of dependencies.—I have often amused myself with a fanciful resemblance of law to the river Nile. When we enter upon the municipal law of any country in its present state, we resemble a traveller, who crossing the Delta, loses his way among the numberless branches of the Egyptian river. But when we begin at the source and follow the current of law, it is in that course no less easy than agreeable; and all its relations and dependencies are traced with no greater difficulty, than are the many streams into which that magnificent river is divided before it is lost in the sea.

To those who wish for any further reasoning to strengthen the remarks which have been already made, I shall subjoin the animated and vigorous expressions of Lord Bolingbroke. “ I might instance,” says he*, “ in other professions, the obligation men lie under of applying themselves to certain parts of history, and I can hardly forbear doing it in that of the law; in its nature the noblest and most beneficial to mankind, in its abuse and debasement the most fordid and the most pernicious. A lawyer now is nothing more,
I speak

* Letters on the Study of History—vol. 1. p. 135.

I speak of ninety-nine in an hundred at least, to use some of Tully's words, *nisi leguleius quidam, cautus et acutus, præco actionum, cantor formularum, auceps syllabarum*. But there have been lawyers that were orators, philosophers, historians: there have been BACONS and CLARENDONS. There will be none such any more, till in some better age, true ambition or the love of fame prevails over avarice: and till men find leisure and encouragement to prepare themselves for the exercise of this profession, by climbing up to the *vantage ground*, so my Lord Bacon calls it, of science; instead of groveling all their lives below, in a mean but gainful application to all the little arts of chicanery. Till this happen, the profession of the law will scarce deserve to be ranked among the learned professions: and whenever it happens, one of the vantage grounds, to which men must climb, is metaphysical, and the other historical knowledge. They must pry into the secret recesses of the human heart, and become well acquainted with the whole moral world, that they may discover the abstract reason of all laws: and they must trace the laws of particular states, especially of their own, from the first rough sketches to the more perfect draughts; from the first causes or occasions that produced them,

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through all the effects good and bad that they produced."

It is thus by real experiments, not by abstracted theories, that human nature is unfolded, the general laws of our constitution developed, and history rendered subservient to moral philosophy and jurisprudence. But although the manners and customs of a people are the most authentic records of their opinions, yet, the greatest caution is necessary in their perusal. We must carefully attend to the circumstances in which they were framed, and to the character of those who represent them, in order to ascertain the evidence which they afford, or to discern the conclusions that may be drawn from them. As the regulations of every country may have their peculiar advantages, so they are commonly tinged with all the prejudices and erroneous judgments of the inhabitants. It is therefore by a comparison only of the ideas and the practice of different nations, that we can arrive at the knowledge of those rules of conduct, which, independent of all positive institutions, are consistent with propriety, and agreeable to the sense of justice. Nor on this head is the detail of the meanest tribes unimportant. If human nature is liable to degenerate,
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it is also capable of proportionable improvement from the collected wisdom of ages.

When these inquiries are properly conducted, they have likewise a tendency to restrain that wanton spirit of innovation which men are too apt to indulge in their political reasonings. To know the laws already established, to discern the causes from which they have arisen, and the means by which they were introduced, is essentially requisite in order to determine upon what occasions they ought to be altered or abolished. The institutions of a country, how imperfect soever and defective they may seem, are commonly suited to the state of the people by whom they have been embraced; and therefore, in most cases, they are only susceptible of those gentle improvements which proceed from a gradual reformation of the manners, and are accompanied with a correspondent change in the condition of society. In every system of law or government, the different parts have an intimate connection with each other. As it is dangerous to tamper with the machine, unless we are previously acquainted with the several wheels and springs of which it is composed; so there is reason to fear, that the violent alteration of any single part may destroy the regularity

gularity of its movements, and produce the utmost disorder and confusion.

Having animadverted, as largely as the nature of this cursory view will admit, on many important topics, on which I shall dilate more circumstantially hereafter, it will be proper to resume my narrative, and to unfold what other subjects will be discussed in the course of these lectures.

After having sketched historically the progress of man from merely animal to civilized situations, and reviewed the relative power, national institutions, and character of those regions, which, in times prior to those that are the immediate objects of our inquiry, figured upon the theatre of the world (in which I shall say no more than is necessary to preserve unbroken the chain of historical events). I shall proceed to describe the genius of modern policy, to mark its progressions, and to contrast it with the spirit of those nations which exist only in the page of history. This portion of our pursuits, is on many accounts more useful and instructive than ruminating over the splendid records of antiquity. For it embraces the description of manners that are familiar to us, events of which we see and feel the consequences, political establishments on which our property and security

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depend, and places and persons for whom experience or tradition hath already given us a concern. But, we must not waste our time in frivolous dissertations on the origin of modern societies. We must, on the contrary, confine our observations to what is within the reach of useful inquiry, and to what is calculated to impart instruction. The gross ignorance, says an eloquent historian,* which anciently covered all the north of Europe, the continental migration of its inhabitants, and the frequent and destructive revolutions which these occasioned, render it impossible to give any authentic account of the origin of the different kingdoms now established there. Every thing beyond that short period to which well attested annals reach, is obscure; an immense space is left for invention to occupy; each nation with a variety inseparable from human nature, hath filled that void with events calculated to display its own antiquity and lustre. History, which ought to record truth, and to teach wisdom, often sets out with retailing fictions and absurdities.

The topics which are to be canvassed in this division of my subject, constitute the most arduous, the most important, and by far the most anxious
part

• Dr. Robertson's Hist. of Scotland.

part of my undertaking. The range of literature necessary to delineate the constitutions of the states of antiquity is by no means extensive, nor involved in tedious obscurity. This division possesses besides the signal merit of polishing the taste, while it improves the understanding. We dwell with ecstasy on the employments of youth, when they furnish opportunity of exercising the judgment of our riper years. They recal a thousand pleasing emotions, and rekindle the fire of imagination, while they are occupying the highest provinces of intellectual exertion. But, amidst the dull, the spiritless, and voluminous collections of the middle ages, the mind often sinks under the fatigue of legendary tales, and monkish biography. He who would catch the rays of light that faintly glimmer in times of darkness and barbarity, must unite to a very inquisitive temper, an active and indefatigable resolution, a patient assiduity and unconquerable perseverance. He must prepare himself to grope in the dark without an intelligent guide, and to dig for materials out of the rubbish of ages and the delapidations of time. From an indigested mass of erudition, he must dispose and fashion his collections, so as to render them palatable to a modern taste. This is, however, a duty incumbent on every one who professes to depict the polity of modern times. Nor is it pos-

fible to comprehend the social institutions of those countries which will fall under our review, or even the fundamental policy of our own nation, without some attention to this preliminary study. In confirmation of this truth, I shall add the authoritative and expressive opinion of that great lawyer,* whom I have cited in a former part of these sheets. “The feudal customs,” says he, “ought to be the study of every man who proposes to reap instruction from the history of modern European nations; public transactions, no less than private property, were some centuries ago regulated by the feudal system. Sovereigns formerly were many of them connected by the relation of superior and vassal. The King of England for example, held of the French king many fair provinces. The King of Scotland, in the same manner, held many lands of the English king. The controversies among these princes were generally feudal; and without a thorough knowledge of the feudal system, one must be ever at a loss in forming any accurate notion of such controversies, or in applying to them the standard of right and wrong.”

It will, therefore, be indispensably necessary, during our examination of the subjects of these
Lectures,

* Lord Kames.

Lectures, to explain at large the nature of the feudal system, to what extent it still constitutes a part of the municipal law of the nations on the continent, in what manner it is expounded by the ordinary tribunals of justice, of whose decisions together with Roman Civil Law, it forms a constituent appendage.

In the course of investigations so various, detached, and unequal, it has been found necessary to recur to a multitude of writers both ancient and modern, the catalogue of whose names might appear ostentatious, without answering any useful purpose. As I proceed on my subject, I shall not fail to make known my authorities, and to suggest the preference which should be given to the most worthy of them. Let it suffice to observe, that I have endeavoured to arrange and class my materials in conformity to the inimitable model which has been placed before me, in the writings of Dr. Gilbert Stuart. In respect to modern times, I have struggled to select and discriminate, and to appeal less to the compilations of foreigners, than to those which have portrayed in their vernacular language, the institutions moral and political of their several countries. May I presume to flatter myself that this part of my course from its novelty and manifold

fold advantages will present many opportunities, useful and entertaining reflections.

Lastly, in my method of analyzing the properties and practical effects of laws and governments, I shall abstain from any indulgence of speculative topics, and abstract reasoning. Considering *Man as he is*, I shall purposely avoid all those disquisitions which are more fitted to the innocent reveries of the closet, than to practical legislation—disquisitions which have led to more erroneous systems, and to more dangerous consequences, than their partizans are willing to admit. Indeed there is no subject, as I have had occasion to illustrate in a former work, on which we are so liable to err as in political speculations; because, while we think ourselves perfect masters of every part of the subject, difficulties suddenly arise, by which the subject itself eludes our keenest researches. Sometimes our views of it are too confined, and sometimes too extended; and often we fail in our judgments from not giving sufficient attention to the influence of various concomitant circumstances, which render general rules of little use. Men of talents reason consequentially on every subject, but when inquiries are connected with the complicated interests of society, the vivacity of their
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genius prevents them from noticing the variety of circumstances which render every consequence, almost, which they can draw uncertain. This is the origin of the French *Systèmes*, which are only a chain of contingent consequences, drawn from a few fundamental maxims, adopted, perhaps, rashly. Such systems are mere conceits; they mislead the understanding, and efface the path to truth. These systems are formed upon slight foundations: the authors are hurried on to a general conclusion from disproportionate premises, and the reader who expects rational deductions, is deluded by fanciful conjectures and unauthorized assertions. The imperfection of language frequently engages us in disputes merely verbal. Every true proposition, when understood, must be assented to universally. This is the case always when simple ideas are affirmed or denied of each other. No one ever doubted that sound is the object of hearing, or colour that of sight, or that black is not white. But whenever a dispute arises concerning a proposition, wherein complex ideas are compared, we may often rest assured that the parties do not understand each other. Luxury, in the opinion of some, is incompatible with the prosperity of a state; according to others, it is the fountain of the welfare and happiness of a nation. In reality, there may
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be no difference in the sentiments of these persons. The first may consider it as too favourable to foreign trade, and as corrupting the morals of a people. The other may consider it as the means of providing employment for such as must live by their industry, and of promoting an equal circulation of wealth and subsistence through all the classes of inhabitants. If they had mutually attended to the combination of each other's complex ideas of luxury, with all its consequences, they would have rendered their propositions less general. The difference, therefore, of opinion between men is frequently more apparent than real. When we compare our own ideas, we constantly see their relations in a clear light; but when we come to communicate these relations to other people, it is often impossible to put them into words sufficiently expressive of the precise combination we have made in our own minds. Since, therefore, all matters of controversy regard the comparison of our ideas, if the terms we use to express them were sufficiently understood by both parties, most political disputes would be soon at an end. Here it may be objected, that we frequently adopt an opinion without being able to give a sufficient reason for it, and yet we cannot persuade our-

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selves to renounce it, though we find it combated by the strongest arguments. To this it may be answered, that in such cases we do not adhere to our own opinions, but to those of others received upon trust. It is our regard for the authority, and not for the opinion which makes us tenacious; for if the opinion were truly our own, we could not fail seeing, or, at least, we should not long be at a loss in recollecting the ground on which it is built. But when we assent implicitly to any political doctrine, there is no room for reason: we then satisfy ourselves with the persuasion, that those whom we trust have sufficient reasons for what they advance. While our assent, therefore, is implicit, we yet fall short of conviction; not because we do not perceive the force of the arguments brought against our opinion, but because we are ignorant of the weight of those which can be brought to support it: and as nobody will sell what belongs to him without being previously informed of its value, so no one will give up an implicit opinion without knowing all that can be said for it. It is better, therefore, in political questions, for us to judge from experience and reason than from authority; to explain our terms, than to dispute about words; and to analyze our combinations, rather than to follow

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conceits,

conceits, however dignified with the name of systems.

Man we find acting uniformly in all ages, in all countries, and in all climates, from the principles of self-interest, expediency, duty, or passion. In this he is consistent, in nothing else. These motives of human actions produce such a variety of combinations, that if we consider the several species of animals in the creation, we shall find the individuals in no class so unlike to one another, as man to man. No wonder then if people differ in every thing which relates to man. As he is a sociable creature, both from necessity and inclination, we also find, in all ages, climates, and countries, a certain modification of government and degree of subordination established among them. Here again we are presented with as great variety as there are different societies; all, however, agree in this, that the end of a voluntary submission to authority is with a view to promote the general good. Constant and uninterrupted experience has proved, that virtue and justice in those who govern, are sufficient to render the society happy under any form of government. Virtue and justice, when applied to government, mean no more than a tender affection for the whole

whole society, and an exact and impartial regard for the interest of every class. All actions, and, indeed, all things are good or bad only by relation. Nothing is so complex as such relations when considered with regard to a society, and nothing is so difficult as to discover truth when involved and blended with these relations. We must not conclude from this, that every operation of government becomes problematical and uncertain as to its consequences: some are evidently good, others are notoriously bad; the middle terms are always the least essential, and the more complex they appear to a discerning eye, the more trivial they are found to be in their immediate consequences. A government must be continually in action, and one principal object of its attention must be the consequences and effects of new institutions. Experience alone will shew what human prudence could not foresee; and mistakes must be corrected as often as expediency requires. All governments have what they call their fundamental laws; but fundamental, or invariable laws can never subsist among men, the most variable of the creatures we know: the only fundamental law, *salus populi*, must ever be relative, like every other position; and this is rather a maxim than a law. It is, however, expedient,

may, absolutely necessary, that in every state, certain laws be supposed fundamental and invariable, both to serve as a curb to the ambition of individuals, and to point out to the statesman the outlines of that plan of government which experience has proved to be the best adapted to the spirit of the people. Such laws may even be considered as actually invariable, while a state subsists without convulsions or revolutions; because then the alterations are so gradual, that they become imperceptible to all but the most discerning, who compare the customs and manners of the same people in different periods of time, and under different combinations of circumstances.

It being assumed as a fundamental maxim, that every operation of government should be calculated for the good of the people, we may, with equal certainty, decide, that in order to make a people happy, they must be governed *according to their predominant character*. The genius of a people is formed upon a set of received opinions respecting three objects, morals, government, and manners. These once generally adopted by any society, confirmed by long and constant habit, and never called in question, form the basis of all laws, regulate the form of every government,

government, and determiné, what is commonly called, the customs of a country. To know a people, we must examine them under these general heads. We acquire the knowledge of their morals with ease, by consulting the tenets of their religion, and from what is taught among them by authority and under direction. The second, or government, is more disguised, as it is constantly changing, from circumstances, partly resulting from domestic, and partly from foreign considerations. A thorough knowledge of their history, and an intercourse with their statesmen, may give a person, who has access to these helps, a very competent knowledge of this branch. The last, or the knowledge of the manners of a people, is by far the most difficult to acquire, and yet is the most open to every person's observation. Certain circumstances with regard to manners, are supposed, by every one in the country, to be so well known, so generally followed and observed, that it seldom occurs to any body to inform a stranger concerning them.

Having now recounted the nature and extent of this undertaking, and the mode in which it is to be conducted, both of which are submitted with the utmost deference to the public; nothing
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remains but to state the personal motives in which they originated. Thirteen years have now elapsed, since I became a student of the Inner Temple, during which time, it is well known, that my life has been chequered by strange vicissitudes of fortune. My education, course of reading, and habits of reflection were, during the greater part of this long period, directed to the attainment of such qualifications as might be auxiliary, or immediately necessary to the favorite profession I had chosen. It never appeared to me, that the learning of an advocate, should be confined within the narrowed routine of practice; but that an enlightened conception of the sources and progress of the jurisprudence of his own, compared with that of other countries, was an attribute of his character, without which, he might be a gainful retailer of precedents, but could have no pretensions to the name of a liberal practitioner.* Satisfied with the justice of this proposition, I endeavoured by foreign travel to facilitate my inquiries,

* That this is the only rational mode of studying the principles of Law and Government has been fully demonstrated by the best masters of Jurisprudence. Vid. Blackstone's *Introd. to the Study of the Law*. Sir W. Jones's *Law of Bailments*, p. 123. Mr. Hargrave's *Pref. to the 13th edit. of Coke upon Littleton*, Domat *Traité des Lois*, fo 19. Gravina *orig. Jur. Civ. ad Cupid. Leg. Juvent.* and Gianoni *Istoria di Napoli*.

ries, and to procure such lights as might one day or other prove advantageous to me in my forensic pursuits. Having also been placed in situations abroad, where I could obtain without much difficulty, some insight into the machinery of government, I was enabled to acquire an experience, which I apprehend is not easily gained from the perusal of books. That these advantages about seven years ago took a wrong direction I am willing to admit ; they however induced more extensive researches, than I might otherwise have prescribed for myself in the line of my profession. Since which, several years of absolute seclusion from the world have gone by, in which these subjects were examined with more temper and sobriety, and a recent opportunity of revisiting the Continent, afforded fresh materials for reflection. These circumstances, superadded to the considerations which have been alledged above, will sufficiently explain the *causes* of my having paid so much attention to the subject.

On the return of public tranquillity, when the speculative opinions of individuals no longer menaced the state with civil convulsions, I did hope, and I had a right to hope, that the old good nature of the country (to use a beautiful expression
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of Lord Clarendon) would have returned with it ; that instead of mutual irritation, all orders of men would have seen the folly of keeping alive the embers of past dissensions, and have conspired together to promote the common welfare of our country. I cannot bring myself to believe it possible for any well-wisher of his country to think differently from me on this point. There are those, however, who entertain an opposite judgment from mine respecting the *means* by which such ends are to be accomplished. It is necessary I should state, as a leading motive for the delivery of these Lectures, that it has been thought proper, by those who are entrusted with the power, to deny me for the present and for an indefinite period, the privilege of exercising that profession to which I think, I have some just claims. During the suspense, therefore, which may follow that determination ; or before I ultimately embark in another branch of the profession to which, in the event of a positive rejection, I must be compelled to resort for the support of my family ; and in order that expensive years of preparation may not be altogether thrown away, I have been incited and encouraged by those whose rank and character would give a sanction to any undertaking, to make public the fruits of those labours,

labours, in which I engaged under expectations that may never be realized.

In any situation of life, these studies will always prove delightful to me, but if they be not accompanied with some practical advantages, they can only be regarded as a very refined species of mental luxury; a luxury, in which, at my time of life, a thousand powerful considerations, forbid me any longer to indulge.—Those who may attend these lectures, will be capable of estimating, from their principles and tendency, on what grounds I felt myself warranted to offer as a candidate for the most honourable, liberal, and exalted profession in the world. And if they appreciate, as I do, the genius and practical influence of our excellent law, as delivered by one of the ablest of our crown lawyers, they cannot wonder at my predilection for the study, and my ambition to become a member of it. “*It is,*” says he,* “*so agreeable to reason, that even those who suffer by it, cannot charge it with injustice; so adapted to the common good, as to suffer no folly to go unpunished, which that requires to be restrained; and yet so tender of the infirmities of human nature, as never to refuse*

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* Serjeant Hawkins—Pleas of the Crown.

an indulgence, where the safety of the public will bear it ; it gives the Prince no power, but of doing good, and restrains the people from no liberty, but of doing evil."—With the most cordial assent to the truth of this comprehensive and just eulogy on our law, I conclude my observations.

F I N I S.

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